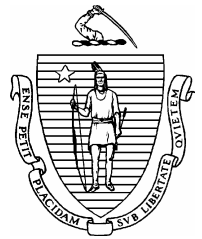




Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 06-0025

IN THE MATTER
OF
BRIAN MOORE

DISPOSITION AGREEMENT

The State Ethics Commission and Brian Moore enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On July 26, 2005, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict-of-interest law, G.L. c. 268A, by Moore. The Commission has concluded its inquiry and, on July 25, 2006, found reasonable cause to believe that Moore violated G.L. c. 268A.

The Commission and Moore now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. The Springfield Liquor License Commission has the authority to issue liquor licenses, renew liquor licenses each year, and investigate any license holder for any alleged noncompliance with the liquor laws. If violations are found, the commission may impose sanctions including loss of license.
2. Among the liquor stores under the Liquor License Commission's jurisdiction is Kappy's Liquors in Springfield.
3. During the time relevant, Moore owned and managed Kappy's.
4. In December of each year from 1999 through 2003, Moore gave to each Springfield License Commissioner two gift certificates whose total value each year was about \$200.
5. Moore gave the gift certificates to the License Commissioners with the intention that the commissioners would come into his store and see that he ran a clean operation.
6. On at least one occasion prior to 2000, a License Commissioner returned the gift certificates unused to Kappy's with a letter declining the offer, noting that there might be an appearance problem, and asking that gift certificates not be sent to License Commissioners again. Despite this, Moore continued to send the gift certificates to the commissioners each year thereafter.

7. In or about late November or early December of each year, the License Commissioners reviewed and voted to approve Kappy's liquor license renewal. As part of this renewal process, the License Commissioners had a practice of distributing all the renewal applications among themselves such that each applicant's premises would be visited by one commissioner.

Conclusions of Law

8. Section 3(a) prohibits anyone, otherwise than as provided by law for the proper discharge of official duty, from directly or indirectly giving, offering or promising anything of substantial value to any municipal employee for or because of any official act performed or to be performed by such an employee.

9. The Springfield Liquor License Commissioners were municipal employees as that term is defined in G.L. c. 268A, § 1(g).

10. The gift certificates that Moore gave to each Liquor License Commissioner were worth over \$50 each year and were therefore items of substantial value.

11. In determining whether items of substantial value have been given or received in violation of § 3, "there must be proof of linkage to a particular official act, not merely the fact that the official was in a position to take some undefined or generalized action." *Scaccia v. State Ethics Commission*, 431 Mass. 351, 356 (2000). The gratuity may be given as a reward for past action, to influence present action, or to induce future action. *Id.* If gratuities are given under such circumstances, then the Commission will conclude that gifts from a regulatee to a regulator are prohibited gratuities.

12. Moore stated that he gave the certificates because he wanted the commissioners to come into his store and see how he ran his business. As noted above, one commissioner would do this each year in connection with the renewal application. Such visits would be official acts by the commissioners. Therefore, Moore gave the gift certificates to the commissioners for or because of their official acts to be performed.

13. There was no legal authorization for Moore to give the gift certificates to the Liquor License Commissioners under these circumstances.

14. Accordingly, the gifts from Moore to the License Commissioners were prohibited gratuities.

15. Accordingly, Moore violated § 3(a).^{1/}

Resolution

In view of the foregoing violations of G.L. c. 268A by Moore, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Moore:

- (1) that Moore pay to the Commission the sum of \$10,000 as a civil penalty for violating G.L. c. 268A; and

- (2) that Moore waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: December 21, 2006

¹ The fact that Moore gave these certificates each year at about the time Kappy's license was up for renewal is troublesome, even though the license renewal is automatic under G.L.c. 138, § 16(a) provided that the license is of the same type as the expiring license and covers the same licensed premises.